

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,

f/k/a General Motors Corp., et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

November 12, 2009

2:02 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

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Hearing re: Debtors Motion Pursuant to Sections 363(b) and 105
of the Bankruptcy Code and Bankruptcy Rule 9019(a) for Approval
of Settlement Agreement with Certain Labor Unions

Hearing re: Motion for Relief from Stay filed by Nancy Grim on
behalf of Richard & Jeanette Turk

Hearing re: Motion for Relief from Stay re: Brooke Alexis Love

Transcribed By: Hana Copperman

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. General Motors, Motors
3 Liquidation Company. Mr. Lederman?

4 MR. LEDERMAN: Thank you, Your Honor. Good afternoon.
5 Evan Lederman, Weil, Gotshal & Manges, for Motors Liquidation
6 Company. Your Honor, we have a light agenda today. We have
7 three items before Your Honor. Two are contested and one is
8 uncontested. The first matter is a motion to approve a
9 settlement with certain labor unions. The second is a lift
10 stay motion brought on behalf of Ms. Love, and the third is a
11 lift stay motion brought on behalf of Ms. Turk. If it pleases
12 the Court I'd like to present the uncontested matter, to which
13 the debtors and the movant have reached a stipulation, and then
14 I'll turn over the podium to Mr. Karotkin who will handle the
15 other two matters.

16 THE COURT: Sure. Go ahead.

17 MR. LEDERMAN: With respect to the lift stay motion
18 filed on behalf of Ms. Turk the debtors have reached an
19 agreement, which has been papered in the form of a stipulation
20 that we will present to the Court following the hearing, in
21 which the debtors have agreed to lift the automatic stay. In
22 this action, it's a state court action brought in Ohio for
23 breach of an express warranty issued by GM, the movants are
24 seeking to lift the automatic stay so that they can actually
25 dismiss the debtors, dismiss MLC from the state court action,

1 and, instead, proceed against New GM. As Your Honor is aware,
2 under the 363 transaction New GM assumed all express warranties
3 and claims that are brought thereunder. However, the Court in
4 Ohio will not allow the action to proceed forward unless there
5 is a formal order from this Court lifting the automatic stay.
6 So for those express purposes we've agreed to lift the stay.

7 THE COURT: That's fine.

8 MR. LEDERMAN: Thank you, Your Honor. That's all I
9 have. I'll now turn the podium over to Mr. Karotkin.

10 THE COURT: Okay. Mr. Karotkin?

11 MR. KAROTKIN: Good afternoon, Your Honor. Stephen
12 Karotkin, Weil, Gotshal & Manges, for Motors Liquidation
13 Company and its affiliated debtors. If Your Honor please,
14 would you like to do the Love motion first?

15 THE COURT: I understand that counsel for Ms. Love is
16 on the phone. Am I correct?

17 MS. RAND-LEWIS: That's correct, Your Honor. Suzanne
18 Rand-Lewis representing Ms. Love and --

19 THE COURT: Okay, Ms. Rand-Lewis.

20 MS. RAND-LEWIS: -- her guardian ad litem in the
21 virtual interaction. I also have the proffer present, and we
22 did receive a call from Brianna Benfield, who I understand is
23 from the firm, represented by counsel, who's also president,
24 indicating that we'd reached a stipulation.

25 THE COURT: Okay. Now, somehow I thought this was in

1 the contested category, Mr. Karotkin. But it sounds to me like
2 you have an understanding.

3 MR. KAROTKIN: Yes, Your Honor, I believe we do. I
4 notified your chambers this morning that we are prepared to
5 enter into a stipulation with counsel to modify the automatic
6 stay to the extent that there is available insurance.
7 Originally, Your Honor, it was our understanding there was not
8 insurance, that this was totally self-insured. After a lot of
9 digging, a lot of investigation, speaking with New GM, we
10 determined late yesterday that there is insurance with respect
11 to this particular claim, and we are prepared to enter into,
12 with counsel, the traditional type of stipulation which would
13 modify the automatic stay to permit them to proceed to the
14 extent there is insurance coverage and limit the recovery to
15 that. We apologize that it took so long to get there, but we
16 did get there, and, as I said, it did require a fair amount of
17 investigation, and to the extent that counsel was
18 inconvenienced by that we do apologize.

19 THE COURT: Okay. Ms. Rand-Lewis, you wish to be
20 heard?

21 MS. RAND-LEWIS: Thank you. My position, Your Honor,
22 is this stipulation that's represented by counsel on the record
23 verbally is sufficient, so we've submitted an order correcting
24 the motion. The order could be modified by the Court, simply
25 eliminating the sanctions requested in number 5 and the order

1 should issue forthwith.

2 THE COURT: Well, you got very technical in what you
3 said, and you can work with the debtor in coming up with a
4 mutually agreeable stip or consent order. If it provides for
5 your lawsuit to proceed with you going against the insurance
6 policy alone that is, as Mr. Karotkin said, a very traditional
7 way of resolving these in this Court and is perfectly fine with
8 me.

9 So why don't you folks paper that, and then I think
10 everybody's needs and concerns will be addressed.

11 MS. RAND-LEWIS: Your Honor, we submitted a
12 stipulation months ago to counsel with those written in. We
13 did a written stipulation, and the stipulation is essentially
14 in exactly the same terms as the submitted order.

15 THE COURT: Well, forgive me for interrupting you, Ms.
16 Rand-Lewis. With the kinds of things that I have on my plate I
17 can't get into the details to the extent of focusing on
18 documents of that character, especially those that may have
19 been submitted days or weeks ago. So --

20 MS. RAND-LEWIS: Our --

21 THE COURT: -- forgive me, please.

22 MS. RAND-LEWIS: We --

23 THE COURT: Work out an order with the debtors. Get
24 both sides to sign it, and I will so order it.

25 MS. RAND-LEWIS: I --

1 THE COURT: You're getting what you're looking for.
2 Is there some reason why I'm having difficulty here?

3 MS. RAND-LEWIS: Not at all, Your Honor. I just
4 wanted to clarify what I was saying. We didn't submit the
5 stipulation to the Court weeks ago. We submitted it to counsel
6 weeks ago. It wasn't implying the Court this happened,
7 stipulation from --

8 THE COURT: Okay.

9 MS. RAND-LEWIS: And that you should have reviewed it.

10 THE COURT: Mr. Karotkin, detail an associate to get
11 this thing done.

12 MR. KAROTKIN: Yes, sir. We will do it right away.

13 THE COURT: Thank you.

14 MS. RAND-LEWIS: Can we get the respective, sort of,
15 return date or date that the matter should be ordered to be
16 completed?

17 THE COURT: Ms. Rand-Lewis, I have rarely, in the nine
18 years and change that I've been a judge or nearly forty years
19 that I've been doing this, that I've had to order parties in my
20 Court to do stuff like that. Unless you have a trial date in
21 the next week I am not of a mind to start now. Mr. Karotkin,
22 get it done as quickly as you can. That's a request, not an
23 order.

24 MR. KAROTKIN: Yes, sir. We will.

25 MS. RAND-LEWIS: Thank you, Your Honor.

1 THE COURT: All right. Have a good day.

2 MS. RAND-LEWIS: Good-bye.

3 THE COURT: Ms. Rand-Lewis, you can leave if you wish.
4 Okay. Go ahead, Mr. Karotkin.

5 MR. KAROTKIN: Your Honor, the next item on the
6 calendar is the motion to approve a settlement with certain
7 labor unions. We noticed this settlement, I believe, as
8 indicated in our papers, to approximately 60,000 of the union
9 retirees who would be affected by this settlement, and we have
10 received one responsive pleading from the IUE which, of course,
11 supports it, since they're a party to the settlement agreement,
12 and we received two letters. I don't know if Your Honor
13 received those letters or not.

14 THE COURT: I think I did.

15 MR. KAROTKIN: They are in the binder, and I really
16 don't know how to address the letters other than these people
17 are just not happy with the settlement. And we understand
18 their unhappiness. However, we don't believe that whatever
19 they have said rises to the level of any basis to deny the
20 relief we're seeking today.

21 I will point out, Your Honor, that the settlement
22 agreement with the IUE and the USW did provide that other, what
23 we call splinter labor unions, could elect to sign on and
24 participate in the unsecured claim, and if Your Honor has the
25 settlement agreement which is annexed to the motion on page 6

1 there is a list of those other splinter unions. And I'm
2 pleased to say that five of the eight splinter unions listed on
3 that page -- if you'd like I can bring it up.

4 THE COURT: No, I have it. I guess I was scratching
5 my head. That means that three of them still aren't availing
6 themselves of this?

7 MR. KAROTKIN: That is correct.

8 THE COURT: Okay.

9 MR. KAROTKIN: Three representing about four and a
10 half percent of the entire splinter union population. Round
11 figures. So we do have about ninety-five percent who have
12 signed up. And I will say, Your Honor, that what's called the
13 IAM, which is the first --

14 THE COURT: The machinists?

15 MR. KAROTKIN: Yes. It's the first one on page 6.
16 They, back in July, signed a settlement agreement with the
17 debtors resolving their health benefits for the retirees, and
18 you entered an order approving that. That was done in
19 connection with the closing of the sale. So they don't have
20 any -- there is no ongoing 1114 issue with these folks who are
21 in the IAM or represented by the IAM.

22 The IAM, along with a couple of others who had also
23 signed similar settlement agreements back in July, were offered
24 the opportunity to participate in this settlement and
25 participate in the claim. For reasons that we don't understand

1 the IAM elected not to do that. However, the IAM has told me
2 yesterday that they somehow would like to participate in the
3 claim. And we're still discussing that.

4 THE COURT: So the train hasn't left the station in
5 terms of them being able to climb on this?

6 MR. KAROTKIN: The train has not totally left the
7 station. It is still possible for these other folks to sign on
8 and participate in the claim. And the way the proposed order
9 is drafted it would permit that to happen. The order also does
10 provide, and it's different from what we submitted, after
11 discussions with counsel for the USW and some of the other
12 folks here today, the order does provide that if the others do
13 not sign on by what is called the initial distribution date
14 under a plan in the MLC Chapter 11 case then the un-allocable
15 portion of the billion dollar unsecured claim, which would be
16 attributable to those who didn't sign on, would be reallocated
17 to those who did sign on.

18 So at the end of the day there would be a total of a
19 billion dollar unsecured claim allowed whether or not these
20 three other unions sign on. But, again, it's four and a half
21 percent.

22 THE COURT: So, it being four and a half percent, it
23 won't have a huge dilutive effect upon those who are already
24 with the program.

25 MR. KAROTKIN: Correct.

1 THE COURT: But it would enable them to share --

2 MR. KAROTKIN: Correct.

3 THE COURT: -- if they were to sign up for it.

4 MR. KAROTKIN: Yes, sir. Yes.

5 THE COURT: I understand.

6 MR. KAROTKIN: And, as I understand it, counsel for
7 those people who have signed on, we circulated the proposed
8 order to them over the last couple of days and everyone is on
9 board.

10 THE COURT: Okay. At this point, Mr. Karotkin, I'd
11 like to give Mr. Kennedy or any of the other folks representing
12 union workers the chance to be heard, if you wish. You don't
13 have to be, Mr. Kennedy, but if you'd like to I'll certainly
14 hear what you have to say.

15 MR. KENNEDY: Just, Your Honor, we submitted a
16 statement in support of the settlement. It represents a
17 difficult balancing of a lot of different issues, and a lot of
18 people contributed, and we appreciate the participation by
19 everyone. We did have to deal with that issue about the four
20 and a half percent, and once we secured the recognition that it
21 would be ratably redistributed in the event that there is no
22 participation by the other unions so that the full billion
23 dollars is available for those post-65 employees who do
24 participate in the settlement we're comfortable with the order
25 as drafted.

1 MR. KAROTKIN: If I could just mention something, Your
2 Honor?

3 THE COURT: You bet. Go ahead.

4 MR. KAROTKIN: The billion dollars is not a
5 distribution of a billion dollars, just so --

6 MR. KENNEDY: No, we -- it's a claim. We understand.

7 THE COURT: It's an allowed claim in that amount.
8 Yes.

9 MR. KAROTKIN: It's an allowed claim.

10 MR. KENNEDY: Yes. We --

11 MR. KAROTKIN: Yes. Allowed prepetition unsecured
12 claim.

13 THE COURT: I understand that. I understand.

14 MR. KAROTKIN: Okay.

15 THE COURT: Mr. Kennedy, anything further?

16 MR. KENNEDY: No, Your Honor.

17 THE COURT: Any of the other counsel wish to be heard?

18 MR. JURY: Your Honor, David Jury, Associate General
19 Counsel, United Steelworkers. For the very same reasons that
20 Mr. Kennedy set forth in his statement on behalf of the IUE the
21 Steelworkers urges this Court to approve this settlement, which
22 is the product of many months of difficult negotiations. Thank
23 you.

24 THE COURT: Okay. Fair enough. Anyone else?

25 MS. CATON: Your Honor, Amy Caton from Kramer Levin on

1 behalf of the creditors' committee. In case there is any doubt
2 in your mind, the committee clearly supports the settlement and
3 we ask for its approval

4 THE COURT: Very good. I'm not going to make lengthy
5 findings, but I just want to make a couple. One of the most,
6 not necessarily analytically difficult but painful issues I
7 dealt with were those articulated by the IUE and by Mr.
8 Kennedy, on his own union's behalf and on behalf of the other
9 unions similarly situated. And I guess I'm speaking mainly to
10 the few folks who are union members who objected, because their
11 contention was, in essence, the mirror image of those that we
12 bankruptcy judges normally see. Their implication was that
13 this was too good for the estate, whereas most people who
14 object to settlements are contending that it isn't good enough
15 for the estate.

16 I read all of those affidavits by employees before the
17 363 hearing, and I well understood what folks in the unions are
18 going through. By the same token, as a matter of law I
19 couldn't then honor or uphold the union's objection.

20 Under those circumstances I not only find this
21 settlement reasonable in the best interests of the estate, but
22 to the extent it's an issue that I'm allowed to consider I also
23 consider it totally reasonable on behalf of the unions. From a
24 position where they didn't have as strong a legal position as
25 union members might have had, they, nevertheless, got what I

1 think was as good a deal as could be hoped for under the
2 circumstances. And this is a very easy settlement for me to
3 approve from both sides. And for that reason I do.

4 So, Mr. Karotkin, I'll ask you to have one of your
5 folks present an order approving the settlement. Has it
6 already been vetted with the unions and so forth?

7 MR. KAROTKIN: Yes, sir. I believe everybody has
8 signed off on the form of proposed order, and we do have it
9 with us today and we can just give it to your office.

10 THE COURT: And it will be entered today or tomorrow.

11 MR. KAROTKIN: Very well. Thank you, sir.

12 THE COURT: Thank you. To what extent do we have
13 other business?

14 MR. KAROTKIN: We do not.

15 THE COURT: Okay. Thank you very much, folks.

16 MR. KAROTKIN: Thank you, sir.

17 THE COURT: Have a good day.

18 (Proceedings concluded at 2:18 PM)

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I N D E X

RULINGS

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Lift the Automatic Stay

of Ms. Turk

Granting of Motion to	17	3
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Approve a Settlement

with Certain Labor Unions

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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a
true and accurate record of the proceedings.

HANA COPPERMAN
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Date: November 15, 2009